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In the Supreme Court of the United States

OCTOBER TERM 1975

No. 75-1361

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. EVELLE J. YOUNGER, Attorney General,
Petitioner,

v.

TAHOE REGIONAL PLANNING AGENCY,
TED JENNINGS AND OLIVER KAHLE,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

The People of the State of California, acting by and through Evelle J. Younger, Attorney General of the State of California, pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on April 30, 1975, as modified on June 11, 1975, affirming the District Court's denial of Petitioner's Motion for Preliminary Injunction.

OPINIONS BELOW

On August 16, 1974, the United States District Court for the District of Nevada denied petitioner's motion for pre-

liminary injunction. The Reporter's Transcript of the District Court's decision rendered from the bench is attached to this petition as Appendix A.

The opinion of the United States Court of Appeals for the Ninth Circuit was issued on April 30, 1975, and modified on June 11, 1975. The opinion as modified is attached as Appendix B.[1]

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its Judgment in this case by way of opinion on April 30, 1975. A timely Petition for Rehearing was filed on May 14, 1975, and was denied on June 11, 1975.

The jurisdiction of this Court to consider this Petition is based upon 28 U.S.C., section 1254(1).

QUESTION PRESENTED

Under the provisions of the Tahoe Regional Planning Compact (Public Law 91-148, 83 Stats. 360 (1969)) when a split vote occurs on the Governing Body of the Tahoe Regional Planning Agency on a permit application wherein the majority of representatives of one state vote to deny the application and the majority of representatives of the other state vote to approve the application, is the effect of such a vote a default approval of the permit application or is it a denial which operates to fulfill the evident intent of the Compact that there be bi-state cooperation in the Lake Tahoe Basin.

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1. This case has previously been before this Court with regard to a bond as a condition of an injunction pending appeal. On November 22, 1974, Associate Justice William O. Douglas issued a stay of the Ninth Circuit's Order that the State of California post a $3.5 million bond or forfeit the injunction pending appeal. On December 20, 1974, Justice Douglas dissolved his stay order.

STATUTES INVOLVED

This case involves an interpretation of the Tahoe Regional Planning Compact which is set out in its entirety as Appendix C. Specifically, the resolution of this case involves the interpretation of Article III(g) of the Compact in light of the other provisions of the Compact. Article III(g) states:

> "A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures."

STATEMENT OF THE CASE

This controversy involves the future of the Lake Tahoe Basin, an area of unique and unsurpassed beauty situated high in the Sierras along the California-Nevada border.[2] The California Supreme Court, in noting the famed scenic beauty of the area, quoted Mark Twain's characterization of the lake as:

> ". . . 'A noble sheet of blue water lifted six thousand three hundred feet above the level of the sea * * * with the shadows of the mountains brilliantly photographed

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2. As noted in *U.S. v. Douglas County,* ....., F.Supp. ....., 5 ERC 1577, (D.Nev. 1973), Lake Tahoe has been described as a priceless natural resource. The only other comparable lake in the United States is Crater Lake which is a national park, 16 U.S.C., § 121, *et seq.* The only other lake in the world with similar characteristics is Lake Baikal in Russia. Lake Tahoe and Lake Baikal are presently the subject of a cooperative study by the United States and Russia. See Agreement On Cooperation In the Field of Environmental Protection Between the United States of America and the Union of Soviet Socialists Republic, signed by Presidents Nixon and Podgorny on May 23, 1972, Treaties and Other International Acts Series No. 7345.

upon its still surface * * * the fairest picture the whole earth affords.' 1 *Roughing It.* (Harper & Row) chapter 22, page 156." *People ex rel. Younger v. County of El Dorado,* 487 P.2d 1193 at 1194 (Cal. 1971).

Unfortunately this natural beauty may also contain the virus of its ultimate improverishment for as people come to embrace this natural wonder they also incrementally destroy it. This unfortunate paradox is explained in Senate Report 91-510,[3] which states:

"A combination of modern trends has triggered explosive growth and development in the basin and along the lake shore. First, the advent of the high speed, all-weather highway brought Lake Tahoe to within a short few hours' drive of major California population centers. This was coupled with a postwar boom in tourism and outdoor recreation that converted Lake Tahoe from a quiet summer resort to a year-round playground for water sports, skiing, and entertainment.

"* * *

"This rapid population growth and accompanying commercial and residential development has posed a serious threat to the Lake Tahoe Basin's fragile ecology. Not only the scenic beauty of the region but the very quality of its natural environment are now at stake. Ominous signs of water pollution are becoming all too evident. The native Lahontan cutthroat trout no longer survive in Lake Tahoe because of man-caused changes in the habitat. Tree removal, excavations, highway construction, landfill, and other development activities have scarred the basin slopes and triggered destructive erosion. . . ."

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3. 91st Cong. 1st Sess. (1969) appearing at 115 Cong. Rec. 33068-33069 (1969).

The Legislatures of California and Nevada and the United States Congress recognized the significance of this resource and the peril posed by uncontrolled development. Using the momentous vehicle of an interstate compact, a vehicle heretofore only used by California to allocate the most precious resource in the West, water, the Tahoe Regional Planning Compact was created. Article I of the Compact as passed by California (Government Code section 66800 *et seq.*), and Nevada (Nev. Rev. Stats. 227.190 *et seq.*) and approved by Congress (Pub. L. 91-148; 83 Stats. 360 (1969)) contains the following findings and declaration of policy concerning this problem:

> "(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.
>
> "(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiences of environmental control.
>
> "(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its man-made environment, to preserve the scenic beauty and recreational opportunities of the region, and *it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development,* to exercise effective environmental controls and to perform other essential functions, as enumerated in this title." (Emphasis supplied.)

Pursuant to these findings both Nevada and California, with the permission of Congress, agreed to allow each state some involvement in land use decisions made in the entire Lake Tahoe Basin. The vehicle for this process is the bi-state Tahoe Regional Planning Agency (hereinafter referred to as TRPA) which was mandated to adopt and enforce a regional plan of resource conservation and orderly development. See Articles III, IV, V and VI of the Compact.

TRPA has adopted a Tahoe Regional Plan pursuant to Article V(b) and a Land Use Ordinance to implement and enforce the Regional Plan. Both California and Nevada have acknowledged TRPA's independent authority and obligations and the propriety of delegating such land use authority to the agency. *People ex rel. Younger v. County of El Dorado, supra; State ex rel. List v. County of Douglas,* 524 P.2d 1271 (Nev. 1974).

The official business of TRPA is carried on by the governing body which is composed of five (5) representatives from California; five (5) representatives from Nevada, Article III(a); one (1) non-voting representative from the United States Government, 83 Stats. 360, section 3.

On July 25, 1974, two permit applications came before the governing body. One application by the present respondent Ted Jennings sought approval for a 10 story, 560 room hotel-casino with parking for 1,400 cars in a 3 story parking garage. See TRPA Staff Report attached to Hansen affidavit. The other application by the present respondent Oliver Kahle sought approval for a 7 story, 960 room hotel-casino with parking for 2,400 cars in a 7 story parking garage *Id.* The latter application called for the construction of a 44-foot [high] cut on a slope and the removal of 150 coniferous trees *Id.* The Staff Reports on

both projects indicated they would violate TRPA ordinances on land use intensity and height and would also create enormous problems of traffic congestion, air pollution and siltation into the nearby lake *Id.*[4]

Three votes were taken on each project. On separate motions votes were taken to approve each project, to deny each project and to determine whether each project was properly before the board. See Briner Affidavit. On each vote two of the Nevada representatives voted to the effect that the projects should be denied and three of the Nevada representatives voted to the effect that the projects should be approved. *Id.* All five of the California representatives voted to deny the projects. *Id.* This placed Nevada in favor of the projects (3-2) and California against (5-0). Cummulatively, 7 governing board members voted to deny approval and three voted in favor of approval (7-3) *Id.*

The legal effect of this vote raises the issue presented in this case.

Suit was brought in the Federal District Court for the District of Nevada as it involved a Federal law passed pursuant to the Compact Clause of the United States Constitution, Article I, Section 10, Clause 3 and involved prop-

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4. That these projects if built as proposed will have serious long-term adverse environmental effects cannot seriously be disputed. The comments of the Federal representative on the TRPA governing body are particularly cogent. The appointment of this *ex-officio* non-voting Federal representative on the TRPA governing body was one of the conditions that Congress required when it approved the Compact. 83 Stats. 360, § 3. He expressed the Federal position as follows:

> ". . . But the proposals that do come before you now are of such an increment in scale and form that to us [the federal interests] they clearly pose threats to air, water quality, traffic congestion and in fact they are, as I've heard described today, a large scale urbanization . . . really it strikes at the very heart of some of the objectives of the Compact." Douglas Leisz, Transcript of TRPA Hearing, July 25, 1974, p. 75.

erty located in Nevada. The United States Court of Appeals for the Ninth Circuit has held that the Tahoe Regional Planning Compact is a Federal law for purposes of original Federal Court jurisdiction. *League to Save Lake Tahoe v. Tahoe Reg. Plan. Agcy.*, 507 F.2d 517 (1974), *cert. denied* — U.S. —, 43 L.Ed.2d 654, March 17, 1975.

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

1. This Case Presents a Critical Question Regarding an Interpretation of the Obligations of California and Nevada Under The Tahoe Regional Planning Compact.

In bringing this action the People of the State of California sought to enforce the provisions of the Tahoe Regional Planning Compact and to effectuate the policies to which California, Nevada and the United States have agreed by adopting the Compact. Specifically, in an action unprecedented in our multi-state republic, California sought to stop construction of two large developments in Nevada since in our view they lacked legal approval by the TRPA.[5]

Petitioner's position can be simply stated. The TRPA review process is *de novo* and not appellate in nature. Article III(g), specifically the second sentence, requires, *inter alia*, that the vote of each state's delegation be tabulated separately so that in effect there are a total of two votes on the TRPA governing body, one from each of the two states. It is petitioner's contention that this second sentence,

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5. This case cannot be construed as an attempt by California to interfere with Nevada's regulation of gaming. On June 26, 1975, split votes occurred on three projects proposed in California to build a total of 200 new residences and a 66 unit hotel. See news article attached as Appendix D. If California is successful in this petition and on the merits, these California projects would also lack TRPA approval.

setting forth the so-called dual majority requirement,[6] was satisfied in the instant case in that a quorum was present and a majority vote of the members present from each state actually was taken with respect to each of the contested projects. Therefore "action" was taken within the meaning of the proviso. Thus, Article VI(k), which calls for a default approval by operation of law if TRPA fails to act on a matter within 60 days, is inapplicable since "final action" occurred. Since the sum and substance of all three votes was a split with Nevada in favor of the projects and California against, the projects failed to receive the required majority vote (2) and thus were rejected.

Not only is this interpretation consistent with the literal wording of the Compact but it is the *only* interpretation which serves to effectuate the stated policies of the Compact for this interpretation makes bi-state cooperation and agreement a prerequisite to proceeding with a project. To read the Compact any other way is to return the region to the pre-compact era when each state could allow whatever development it wished without considering the concerns of the other state.

The United States Court of Appeals for the Ninth Circuit has rejected California's position, indicating that when California and Nevada entered the bi-state compact neither relinquished any sovereignty over land within the Tahoe Basin. To reach this result the Ninth Circuit wreaked havoc with the normal democratic parliamentary process by a myopic interpretation of the Compact that creates a type of administrative review unknown in this nation.

With regard to determining the sovereign rights of the respective states, the Ninth Circuit opined:

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6. This refers to the requirement that the majority of representatives from both states must agree before a proposal may be approved.

> "What California fails to acknowledge fully is that the Compact and the TRPA [Tahoe Regional Planning Agency] are *sui generis* offsprings of a marriage between sovereign partners, each extremely reluctant to relinquish its sovereignty over a portion of its territory." Slip Op. p. 6.

The Ninth Circuit went on to assert that the TRPA board was not ". . . an omnipotent board which could enforce its will over the majority vote of one state's delegation." *Id.*, p. 6.

What the Ninth Circuit failed to recognize was that its decision necessarily allowed one state's delegation to be overruled by the other; in fact the opinion creates the potential for an extreme diminution of the sovereignty of each state in the Lake Tahoe Basin for each can no longer even control development within its own borders. Thus the holding fails to accomplish its avowed purpose of preserving the sovereignty of each state.

The explanation for this paradox turns upon the application of the Ninth Circuit's decision to specific fact situations. In the issue before the Court a majority of the Nevada representatives voted to approve a project to be built in Nevada and a majority of the California representatives voted against the project. The Ninth Circuit, resting on its premise of retained sovereignty, held that under the provisions of the Compact, when the majorities of each state do not agree, the vote is a nullity and the project is deemed approved pursuant to Article VI(k) of the Compact (failure to take action within 60 days of application). The fallacy of the premise becomes apparent, however, if the fact situation is changed. As California pointed out in its brief to the Ninth Circuit (Opening Brief, p. 29) if the proposed project were, for example, strip mining on California's side of

the Lake, and a majority of the California delegation voted against it and a majority of the Nevada delegation voted for it, California's sovereignty notwithstanding, the project would be approved under the interpretation adopted by the Court.[7]

The above is set out to illustrate that by entering the Compact both states surrendered some sovereignty in the Lake Tahoe Basin to the Tahoe Regional Planning Agency and assumed an obligation to pursue the purposes for which the Compact was created.

The State of California now petitions this Court to determine the nature and scope of this obligation for the ultimate determination of interstate controversies ". . . is the function and duty of the Supreme Court of the Nation." *Dyer v. Sims*, 341 U.S. 22, 28 (1950).[8]

The importance of the resolution of this issue cannot be overstated. The interstate compact at issue is unprecedented in its attempt to provide for interstate land use regulation. Thus, the extraordinary natural resource value and scenic beauty of Lake Tahoe join water in the arid West as resources of such significance as to warrant use of the interstate compact machinery.

The Supreme Courts of both states have remarked upon the unique value of the Tahoe Basin and the fact that what

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7. It is no answer to this problem that local government in California would not approve such a project for it was the inability of local governments to effectively protect the lake while allowing development that prompted the creation of the Compact. *Note*, Regional Government for Lake Tahoe, 22 *Hastings Law Journal*, 705, 706-707 (1971). See also *Silvera v. City of South Lake Tahoe*, ... P.2d ....., 3 Cal.App.3d 554, 83 Cal.Rptr. 698 (Cal. 1970) for an example of the inadequacy of local government control of development.

8. While the State of Nevada is not a party it did file an *amicus* brief in opposition to petitioner in the Ninth Circuit. This Court has stated that the non-joinder of a participant in a Compact does not affect the Court's ability to determine rights and obligations arising out of a Compact. *Hinderlider v. La Plata Co.*, 304 U.S. 92, 110 (1937).

occurs in one state's part of the basin has profound effects on the other state. In *State ex rel. List v. County of Douglas, et al.*, 524 P.2d 1271 (Nev. 1974), the Nevada Supreme Court quoted with approval the statement of the Supreme Court of California in *People ex rel. Younger v. County of El Dorado*, 487 P.2d 1193, 1201 (Cal. 1971) that:

> "... The water that the Agency [TRPA] is to purify cannot be confined within one county or state; it circulates freely throughout Lake Tahoe. The air which the Agency must preserve from pollution knows no political boundaries. The wildlife which the Agency should protect ranges freely from one local jurisdiction to another. Nor can the population and explosive development which theaten the region be contained by any of the local authorities which govern parts of the Tahoe Basin. Only an Agency transcending local boundaries can devise, adopt and put into operation solutions for the problems besetting the region as a whole." 524 P.2d at 1275.

Given the value to the nation of the Lake Tahoe Basin and the importance of resolving the effect of votes where Nevada and California do not agree, it is respectfully submitted that this is an appropriate case for review by this Court.[9]

2. The Resolution of This Issue Will Have an Important Impact Upon the Administration of the Compact and the Land Use Regulations Adopted Pursuant Thereto.

Upon the issuance of the Ninth Circuit's Opinion on April 30, 1975, TRPA (a prevailing party), along with petitioner

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9. While this case involves two projects, the Court's determination of this issue will affect two other projects which were the subject of a split vote and are the subject of the lawsuit, *League to Save Lake Tahoe v. TRPA*, Nev. Dist. Ct. No. Civ. S2989. In addition the projects noted in Appendix D and future projects will be affected.

herein, sought a rehearing. This was the agency's first formal participation in this case other than simply filing the answer to the Complaint. The reason for TRPA's petition is obvious: the Ninth Circuit opinion has destroyed the ability of TRPA effectively to regulate development in the Tahoe Basin and has made the statute unworkable.

The primary basis of TRPA's concern was with regard to the type of review the agency exercises over proposed projects. In a compelling analysis of the Compact and the agency's regulations TRPA sought to convince the Ninth Circuit that it exercises *de novo* and not appellate review over all proposed projects. See Petition for Rehearing and Motion for Modification of Opinion by Appellee Tahoe Regional Planning Agency, pp. 5-10. In its Petition TRPA points out:

> ". . . The very absence of any 'finality' with respect to locally 'issued' Section 4.32 permits persuasively evidences TRPA's action thereunder as *de novo* rather than appellate . . . .
>
> "• • •
>
> "The elaborate TRPA hearing procedure and TRPA staff report and recommendation created by Section 4.34 is inconsistent with the concept of TRPA as merely an appellate tribunal. No 'new look' at the proposal by TRPA staff would be necessary in such context; merely reviewing the record of proceedings before the local governmental entity would suffice. The hearing *de novo*, the staff report and recommendations, and testimony by *any* interested persons all partake of original rather than appellate jurisdiction." *Id.*, p. 9. (Emphasis in Original.)

The type of TRPA review is the crux of the entire case. The Ninth Circuit Court of Appeals premised its opinion on the proposition that TRPA exercises appellate review and therefore, as in judicial proceedings, a tie vote con-

stitutes affirmance of a lower body's decision. Original, unamended Slip Opinion, p. 8 (included herein as Appendix E), citing *State Department of Ecology v. City of Kirkland*, 523 P. 2d 1181, 1184 (Wash. 1974). Appellant, petitioner herein, had argued to the Ninth Circuit that the agency exercises *de novo* review and, therefor, a tie vote constitutes a failure to obtain the requisite vote for passage and the permit application is denied. See Appellant's Opening Brief, pp. 30-34, citing *inter alia*, *Sokolis v. Zoning Board of Appeals of Springfield*, 157 N.E.2d 427 (Ill. 1959); *Montgomery County Board of Appeals v. Walker*, 180 A.2d 865 (Md. Ct. App. 1962).

On June 11, 1974, the Ninth Circuit amended its opinion (*Compare* pages 7 and 8 of Appendices B and E) to reflect some consideration of TRPA's position. The opinion now states that the nature of review by the agency is measured by the vote on the proposed project which of course occurs at the end of the process. Thus, review is generally *de novo*, but when the vote is a split vote, the review is appellate. Slip Opinion, Appendix B, p. 8.

Such a *post hoc* rationalization is illogical, unprecedented and contradicted by the agency's interpretation of the statute it enforces.

The Compact and the TRPA regulations seek to fulfill the policy:

> "... to provide for the region as a whole the planning, conservation and resource development essential to accommodate a growing population within the region's relatively small area without destroying the environment." *People ex rel. Younger v. County of El Dorado*, *supra*, p. 1196.

To this end TRPA took the position before the Ninth Circuit that:

> "Accordingly, by express Compact language, the sovereign creators of TRPA did 'envision it as a super

> bi-state agency whose approval would be a prerequisite to all land development' *if* TRPA by its ordinances so required."[10] Petition for Rehearing, p. 6. (Emphasis in original.)

Consequently, according to the agency charged with the administration of the statute, it is "utterly astounding" (*Id.*, p. 10) that the Ninth Circuit should find that TRPA exercises anything other than *de novo* review of all projects.

Thus, the Ninth Circuit's opinion makes the statute virtually unworkable. It becomes unworkable because the agency cannot know until the vote is taken whether to take testimony, prepare a Staff Report and recommendations (see *e.g.*, attachments to Hansen affidavit) or whether to merely review the record of the lower agency. This confusion cannot be conducive to good administration.[11]

3. The Departure From Established Doctrines of Law Adopted in the Ninth Circuit's Opinion Is So Egregious This Court Should Exercise Its Discretion to Correct the Error.

As pointed out previously, the linchpin of petitioner's argument is that under normal parliamentary procedures if the matter is a *de novo* review any motion failing to receive a majority vote is considered rejected. *Robert's Rules of Order Newly Revised*, § 43 (1970). However, if the process contemplates the review of an issue decided by a lower body then a tie vote has the effect of affirming the lower body's decision. This latter concept is common in judicial proceedings.

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10. According to TRPA its ordinances so require. Petition for Rehearing, p. 7. It is noteworthy in this regard that TRPA admitted in its complaint that the projects in issue violate TRPA's planning ordinances. See Exhibit A to Appellant's Opening Brief.

11. It should also be noted the Court opinion, Slip Op., p. 8, n. 5, leaves totally ambiguous whether judicial review of a project would include review of the administrative record of the local agency or TRPA or both.

The Ninth Circuit has stated, in a Solomonesque but illogical manner, that TRPA exercises both these types of review depending upon the outcome of the vote. Specifically the Ninth Circuit held:

> ". . . However, the TRPA's power of de novo review is fully exercised only when a dual majority for or against a proposal is reached.
>
> "When a split vote is registered, the TRPA assumes a different posture, and becomes more like an appellate court than a zoning board." Slip Op., p. 8.

While it may be true that the Tahoe Regional Planning Compact is *sui generis,* it is impossible to logically reason that the type of review depends on the outcome of the vote. Either the review is *de novo* or appellate.

This is not some quibble with *dicta* of the Court. The case turns upon the resolution of this issue. Furthermore, future agency action and judicial review of that action depends on the resolution of this issue.

In its opinion the Ninth Circuit wrote:

> "The entire dispute turns on the meaning of the words 'action' in Article III(g) and 'final action' in Article VI(k). The reason these simple terms have caused so much difficulty is that appellees' interpretation is inconsistent with common parliamentary procedure." Slip Op., p. 5.

The Court went on to state:

> ". . . In interpreting the provisions of the unique statutory scheme involved here, we must look not to Robert's Rules of Order or decisions dealing with tie votes by zoning boards, but instead to the actual language used, as viewed against the backdrop of the Compact's legislative history." Slip Op., p. 6.

While it is urged that courts should be chary of any decision dispensing with the parliamentary procedures upon

which our democracy is founded, it is also highly significant that the Ninth Circuit's analysis did not embark upon a scrutiny of the "actual language used" in the Compact.

As indicated by the Ninth Circuit, Article III(g) is one of the key provisions of the Compact. It establishes how the agency shall transact business. It reads:

> "A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures."

Petitioner contends that a close inspection of this section indicates it follows the usual structures by which all democratic institutions are organized. The first sentence establishes a quorum, the minimum number of representatives who can take action in the name of the body. The second sentence establishes the requisite vote which must be recorded for any proposal to be passed or adopted in the name of the body. There is nothing unusual about this process and the fact that the Compact is *sui generis* does not change the meaning of the section. Additionally, it is mandated that the Compact be construed to accomplish the intended purposes. Article VIII(a). In view of the environmental problems of the Basin recited in Article I, it is violative of the Article VIII(a) command to conclude that two mammoth projects are approved by default as if never taken up or reviewed by TRPA!

For the Ninth Circuit to reject the obvious interpretation, reject the application of usual parliamentary procedures and arrive at the impossible conclusion that the Tahoe Re-

gional Planning Agency exercises both *de novo* and appellate type review warrants this Court's review.[12]

CONCLUSION

As this is the first time a state has attempted to stop construction in a neighboring state pursuant to a bi-state compact, this case involves a definition of sovereign interests never before passed upon by this Court. As this Court has noted in several recent cases (*Sierra Club v. Morton*, 405 U.S. 727 (1972); *United States v. SCRAP*, 412 U.S. 669 (1973); *Village of Belle Terre v. Borass*, 416 U.S. 1 (1974)) there is an increasing emphasis in America on the quality of life and in the right to a healthy and aesthetically pleasing existence. The Tahoe Regional Planning Compact creates a resource allocation mechanism designed to protect the rights of the participants in the Compact to a healthy and aesthetically pleasing environment for their citizenry. In this regard, the Tahoe Regional Planning Compact is the first interstate compact to attempt interstate land use regulation. The effectiveness of this noble experiment in protecting the Lake Tahoe Basin will be a significant measure of the ability of our Nation to reverse the trend of despoliation of our natural resources.

Consequently, these weighty issues deserve the attention and deliberation of this Court to provide direction for not only the two states involved but also for other states which share common boundaries bisecting important resources.

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12. The Court also adopted, without comment, the proposition that TRPA could delegate some of its authority to the local governments, thus setting the stage for the appellate type review. Slip Op., p. 6. This is contrary to the long established doctrine to prevent the abuse of power by persons who were not selected by the people to exercise that power. That doctrine is delegated authority cannot be further delegated. *Shankland v. City of Washington*, 30 U.S. 390, 393 (1881); *Hampton & Co. v. United States*, 276 U.S. 394 (1928).

The legal effect of a difference in position on proposed projects between the two state delegations to TRPA is an important question of even broader importance than a case of interstate pollution as was involved in the case of *Illinois v. City of Milwaukee*, 406 U.S. 91 (1971). This is so because the issue raised concerns the correct interpretation of an unprecedented compact dealing with the future of the Lake Tahoe Basin, a national treasure not unlike Niagara Falls or Yellowstone National Park. The Circuit Court decision so totally departed from normal doctrines of law as to frustrate the evident intent of the Compact to make TRPA the mechanism with plenary powers to plan and regulate activities affecting the precious Lake Tahoe Basin.

For all of the above stated reasons, it is respectfully submitted that this Court exercise its discretionary authority to issue a writ of certiorari in this case.

Dated: San Francisco, California 94102

July 24, 1975.

EVELLE J. YOUNGER
Attorney General of California
ROBERT H. O'BRIEN
Assistant Attorney General
NICHOLAS C. YOST
Deputy Attorney General
E. CLEMENT SHUTE, JR.
Deputy Attorney General
ALEXANDER T. HENSON
Deputy Attorney General
Attorneys for Petitioner.

(Appendices follow)

Appendix A

In the United States District Court
for the District of Nevada

Honorable Bruce R. Thompson, Judge

Civil No. R-74-108

People of the State of California, ex rel.,
Evelle J. Younger, Attorney General,
Plaintiff,

vs.

Tahoe Regional Planning Agency,
Ted Jennings, Oliver Kahle,
Defendants.

MOTION FOR PRELIMINARY INJUNCTION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reno, Nevada, Wednesday, August 14, 1974,
2:00 o'clock p.m.

Allan D. Bunnell,
Official Reporter.

RENO, NEVADA, WEDNESDAY, AUGUST 14, 1974,
2:00 O'CLOCK P.M.

THE COURT: Because of the time limitations involved in this case, it is not possible for a court to give the matter full treatment, so to speak; that is, to study and analyse all the authorities and write an opinion setting forth the Court's views regarding the law. That may or may not be unfortunate, because experience indicates that one of the causes of delay in legal procedures is the desire of a court to do a thorough job and make a full expression of its reasons for a decision in written form.

Because this is an application for an injunction to restrain action which is scheduled to be taken within a few days, it is important that the Court should render a decision promptly, and do the best it can on the basis of the material that has been presented.

I would like to say, however, that I have had the benefit of arguments and briefs from counsel who are obviously very knowledgeable in the field and have cogently expressed their arguments in support and in opposition to the motion for a preliminary injunction.

It probably would be proper to observe that many people—and I know not for what reason—in the United States have acquired the idea that you can go to court and obtain a decision in favor of their personal and individual idea of what is just and equitable in the premises. Such an attitude implies that the Court agrees with the litigant and that the Court's personal opinion is in accord with the litigant's view of what is just and equitable in the premises.

I can frankly state that if I should decide this case strictly on the basis of what I personally believe, what my personal predilections are, I would decide it in favor of the plaintiff, because I personally believe that a prolifera-

tion of hotel casinos on the shores of Lake Tahoe is some form of an abomination and it should be limited as much as possible. But so long as we in our great country adhere to the principle that we are under a government of laws and not of men, my personal opinions and predilections have very little to do with the subject.

The only reason that the plea of the State of California must fail in this particular case is because of the Legislature and Governor of the State of California, the Legislature and Governor of the State of Nevada, those in office at the time the respective acts of those respective legislatures which established the Compact for the Tahoe Regional Planning Agency were adopted, and the Congress of the United States which approved that Compact.

Any difficulties that the Tahoe Regional Planning Agency faces with respect to obtaining what it may well believe to be the true intent and purposes of the legislation are encountered because of what those people who agree with the position of the State of California would consider to be deficiencies in the Compact.

That Compact is the basic charter of this Agency; it is that Agency's constitution. The method of operating and the limitations upon its operations are governed entirely by that Compact; and the Agency itself has recognized that, because when it adopted rules and regulations, as it was authorized to do in implementation of the authority granted to it by the Compact, very carefully in every instance, that I have been able to observe, included in those rules and regulations the specific limitations on its powers which were set up in its own constitution; that is, the Compact itself.

There isn't anything I can add to the presentations of counsel with respect to those limitations. Article III of the Compact, which governs the organization of the Agency, Subsection (g), provides that:

> "A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the Agency."

So under that provision you have to have at least three representatives from California and three representatives from Nevada to constitute a quorum.

> "A majority vote of the members present representing each state shall be required to take action with respect to any matter."

I don't see anything equivocal, ambiguous or undertain about that provision. It is very specific. It provides, in clear and unambiguous terms, that a majority of the quorum present from each state has to agree before action can be taken.

On a mumerical basis, the situation is even more stringent than suggested by counsel if their briefs, who assumed that there would always be a five-five membership present at an Agency meeting. But as I read this—and I see no room for disagreement—if you had three members of the quorum from Nevada present: five members, more than a quorum, from California present at one of those meetings, the vote of the two members from Nevada could stop effective action by the Agency.

No matter what anybody believes as to the usefulness of that sort of provision in a Compact of this kind, it is there; the Court can't change it. The only wai it can be changed is by another joint action by the legislatures of the States of California and Nevada, submitted to the Congress of the United States for its approval.

The subsequent pertinent provision in the Compact, Subsection (k) of Article VI, is not properly characterized as simply a time limitation on action; it is obviously much

more than that. It is in the section of the Compact that specifies the powers of the Tahoe Regional Planning Agency. It provides:

> "Whenever under the provisions of this article, or any ordinance, rule or policy adopted pursuant thereto, the Agency is required to review or approve any proposal, public or private, the Agency shall take final action whether to approve, to require modification or to reject such proposal within sixty days after such proposal is delivered to the Agency. If the Agency does not take final action within sixty days the proposal shall be deemed approved."

And this language is reiterated in Section 4.32 of the Land Use Ordinance adopted by the Agency.

The stalemate in the Agency because of the Charter provision that there must be a majority vote from the quorum present from each state for action to be taken constitutes no action; it is not either approval, rejection or modification.

You wonder how this type of a Charter could have been adopted. Those who oppose these two applications for casino hotels may wonder how anyone in his right mind could set up a charter which contains that sort of a roadblock right in its own composition. It all stems, as I see it, from a lack of willingness on the part of two sovereign states; that is, the States of California and Nevada, to surrender to a bi-state agency a portion of the sovereignty of the particular state and its political subdivisions.

We have seen that same sort of thing on an international scale. When the Charter of the United Nations was negotiated in San Francisco—I think it was in 1948 or thereabouts—it was the United States that insisted on the veto power of one country in the Security Council, and

required that provision to be included in the Charter of the United Nations, because the United States of America did not want to surrender a portion of its sovereignty to the control of an international organization. We are all familiar with the result of that; a provision which over the years substantially impeded the activities of the United Nations because of vetoes exercised by one international power, which was not the United States of America.

We have something of the same situation existing here. It has been indicated that at least initially the State of California was willing to surrender a portion of its sovereignty to the bi-state agency, but acceded to a demand by the State of Nevada that the provision be included that action would be taken only on the approval of the majority of a quorum from each of the participating states. I don't know whether that is true or not, and I don't think it makes much difference, because whether or not one state or another state initiated the proposal, it is clear that both states agreed to it.

I think it also should be observed that I have found nothing in the Compact or in the regulations which requires approval by the Tahoe Regional Planning Agency of a permit in this situation. There are provisions in both the Compact and the regulations for a review of action taken by subordinate political subdivisions of each state involved in the administration and enforcement of the regulations and Compact of the Tahoe Regional Planning Agency, and authority in the Agency to reject any permits or authorizations granted by such subordinate agencies. I presume also that the Tahoe Regional Planning Agency could approve theoretically a proposal which had been rejected by Douglas County, for example, but I can't imagine how that question would ever get before the Agency, because all of the preliminary subordinate approvals must be obtained before

the Tahoe Regional Planning Agency, as the final arbiter, ever reviews the problem.

We are not here to implement what I think should be done for the future of Lake Tahoe; we are here to enforce the law that has been written. The only function of the Court is to interpret and enforce the provisions of the Interstate Compact and the regulations. For me there is no room for an interpretation. I think the provisions are clear, and I am required to comply with them.

We are in, really, the early stages of the control of the Lake Tahoe Basin, and there are many problems that have to be resolved. I do not anticipate that the decision of the Douglas County Commissioners and Planning Commission, the Nevada Lake Tahoe Agency in this particular case, presages an invitation to anyone, who thinks he can make a lot of money, to build another hotel casino at Lake Tahoe, at least I hope it doesn't.

In any event, the motion for a preliminary injunction is denied.

Mr. Breen, will you prepare an appropriate order?

MR. BREEN: I will, your Honor.

THE COURT: And have it in tomorrow.

MR. BREEN: I will, your Honor.

THE COURT: All right, we will stand adjourned.

UNITED STATES OF AMERICA,
DISTRICT OF NEVADA—ss.

I, ALLAN D. BUNNELL, Official Reporter for the United States District Court for the District of Nevada, do hereby certify that I was present and reported in Stenotype writing the proceedings had in the foregoing matter; that I thereafter reduced my said Stenotype notes to typewriting; that the foregoing transcript constitutes a full, true and correct partial transcript of the proceedings had therein.

Dated at Reno, Nevada, this 15th day of August, 1974.

/s/ ALLAN D. BUNNELL
Official Reporter.

Appendix B

AMENDED: June 11, 1975

United States Court of Appeals
for the Ninth Circuit

No. 74-2546

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. EVELLE J. YOUNGER,
Attorney General,
Plaintiff-Appellant,

vs.

TAHOE REGIONAL PLANNING AGENCY,
TED JENNINGS, OLIVER KAHLE,
Defendants-Appellees.

OPINION

[April 30, 1975]

Appeal from the United States District Court
for the District of Nevada

Before: KOELSCH and CHOY, Circuit Judges,
and KELLEHER,* District Judge.

CHOY, Circuit Judge:

The State of California appeals from the district court's refusal to grant a preliminary injunction to halt construction of two hotel-casinos in the Lake Tahoe Basin (the Basin). We affirm.

*Honorable Robert J. Kelleher, United States District Judge, Central District of California, sitting by designation.

In order to protect the natural resources and ecological balance of the Lake Tahoe Basin[1] the states of California and Nevada in 1968 entered into a compact to create a regional agency with extensive powers to regulate and control development within the Basin. Cal. Govt. Code § 66801 (West Supp. 1975); Nev. Rev.Stat. §§ 277.190 et seq. (1973). The compact, known as The Tahoe Regional Planning Compact (the Compact), received the consent of Congress in December 1969. Public Law 91-148, 83 Stat. 360.

The Compact created the Tahoe Regional Planning Agency (TRPA), which was composed of five delegates from each state and one non-voting delegate representing the federal government. The TRPA was charged with responsibility for developing within ninety days a regional interim plan and, within eighteen months, a regional plan which would reflect a wide variety of economic, environ-

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1. Article I of the Compact states:

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title."

mental and social considerations. The Compact also directed the TRPA to adopt all ordinances, rules, regulations and policies necessary to effectuate the regional interim plan and the regional plan. *See League to Save Lake Tahoe v. Tahoe Regional Planning Agency,* 507 F.2d 517, 518 (9th Cir. 1974).

Pursuant to its mandate, the TRPA adopted various procedural regulations and imposed certain land use, height and density restrictions applicable to developments in the Basin. If a builder wanted to develop more than 200 square feet of land or to erect certain types of structures, he was required first to seek a permit from the local permit-issuing authority (generally, the zoning authority of the county in which the construction was to take place). The permit-issuing authority, according to TRPA regulations, was required to adhere to the policies and land restrictions adopted by the TRPA but was granted the power to issue variance permits under certain circumstances.

Appellees Jennings and Kahle each applied for and was granted an administrative (special use) permit from the governing body of Douglas County, Nevada, for the construction of a hotel-casino. The Douglas County commissioners also granted a height variance whereby each appellee was permitted to construct his hotel-casino to a height greater than the forty foot limit allowed by TRPA's Land Use Ordinance. In granting the variances the commissioners, as required by Section 8.33 of the Land Use Ordinance, made a specific finding that the height variance for each hotel would be a benefit to the general welfare of the region. The projects were then submitted for approval to the Nevada Tahoe Regional Planning Agency, a state agency empowered to exercise environmental control over gaming establishments in the Nevada side of the Basin. The Nevada agency approved both projects.

Jennings and Kahle then submitted the special use and height variance permits to the TRPA for review, as required by Section 4.32 of the Land Use Ordinance. On July 25, 1974, following a hearing before the TRPA, a motion to approve both projects was made as well as a motion to deny both projects. The vote was as follows:

Motion to Approve Projects

	For	*Against*
California Delegates	0	5
Nevada Delegates	3	2

Motion to Deny Projects	*For*	*Against*
California Delegates	5	0
Nevada Delegates	2	3

Soon after the vote, Jennings and Kahle made plans to commence construction on their respective projects, California brought this action to enjoin construction, and the district court issued a temporary restraining order. After a hearing, however, it dissolved the order and denied California's motion for a preliminary injunction. The court's decision was based on its conclusion that the TRPA votes did not constitute "action" within the meaning of the Compact and that the TRPA's failure to take action resulted in the projects being deemed approved under Article VI(k) of the Compact.

Scope of Review

By arguing that the district court's decision may not be reversed unless it amounted to an abuse of discretion, the builders raised a threshold question relating to the scope of appellate review. Although it is a well-settled general rule that the grant or denial of an interlocutory injunction is a matter committed to the discretion of the district court,

that rule does not apply to cases where the court's action is erroneous as a matter of law. *See K-2 Ski Co. v. Head Ski Co., Inc.*, 467 F.2d 1087, 1088 (9th Cir. 1972). Since the district court's denial of the preliminary injunction was based solely upon its *legal* conclusions on the meaning of the TRPA Compact, its action is freely reviewable. *See Societe Comptoir De L'Industrie Colonniere Etablissements Boussac v. Alexander's Department Stores, Inc.*, 299 F.2d 33, 35-36 (2d Cir. 1962).

"Final Action"

The unique issue raised by this appeal is whether, within the meaning of the Compact, no "final action" is taken by the TRPA on a proposal unless there is a majority vote by *each* state's delegation that the proposal presented is either approved, rejected, or modified. At the center of this controversy finding California and Nevada on opposite sides are two Compact provisions. Article III(g) provides:

> A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. . . .

And Article VI(k) provides:

> Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved.

According to California, Article III(g) is ambiguous and should be interpreted as follows:

> When a quorum is present and votes on a proposal, if that proposal does not receive a positive vote from the majority of both states then the proposal fails. That vote is final action and if that vote comes within 60 days after the proposal is submitted to the TRPA, Article VI(k) of the Compact with its 60 day provision is irrelevant.

Brief for Appellant at 12-13.

Appellees, on the other hand, emphasize the Article III language that a majority vote of the members representing each state shall be required to *"take action"* with respect to any matter. According to the builders, unless there is a dual majority vote either to approve, reject or modify a proposal, Agency "action" has not taken place and Article VI(k) comes into play even though a vote has been recorded. Appellees' interpretation would dictate that their projects be "deemed approved" under Article VI(k). This is so because the majority of each state's delegation on the TRPA failed either to approve or reject the projects. In other words, appellees suggest that under the statutory and regulatory scheme a "split vote" (i.e., a majority of one state's representatives voting one way and a majority of the other state's representatives voting another) should be considered a nullity, or at least not an "action" or "final action." The district court, finding the language of the two Articles unambiguous, adopted the appellees' view of the voting and approval procedure.

The entire dispute turns on the meaning of the words "action" in Article III(g) and "final action" in Article VI(k). The reason these simple terms have caused so much

difficulty is that appellees' interpretation is inconsistent with common parliamentary procedure. Generally, once a quorum is present, any vote by an organization on any proposal is considered "action." Thus, if there is a proposal on the floor for approval of a new meeting time, and it fails to gain a majority vote (e.g., the vote ends in a tie), "action" has been taken and the proposal is considered *rejected. See* Robert's Rules of Order Newly Revised § 43 (1970). Consistent with this parliamentary rule are numerous decisions by courts holding that tie votes by zoning boards or other governmental bodies have the effect of *denying* the proposals before them. *See, e.g., Sokolis v. Zoning Board of Appeals of Springfield,* 21 Ill. App. 2d 178, 157 N.E. 2d 427 (1959); *Montgomery County Board of Appeals v. Walker,* 288 Md. 574, 180 A.2d 865 (Ct. App. 1962). According to California, these cases indicate that it is absurd to argue that a split vote by the TRPA does not amount to a "denial" or at least "action". California, understandably, wants to avoid the situation where a significant construction project is "deemed approved" even though its proponents can muster no more than a bare majority of one state's delegation or quorum.

Although we find California's argument extremely appealing on an emotional level, it simply does not take into account the plain meaning of the Compact and the intent of its architects. California makes a critical error in likening the Compact to ordinary zoning legislation and the TRPA to a typical zoning board. In interpreting the provisions of the unique statutory scheme involved here, we must look not to Robert's Rules of Order or decisions dealing with tie votes by zoning boards, but instead to the actual language used, as viewed against the backdrop of the Compact's legislative history.

What California fails to acknowledge fully is that the Compact and the TRPA are *sui generis* offsprings of a marriage between sovereign partners, each extremely reluctant to relinquish its sovereignty over a portion of its territory. The TRPA is a powerful planning agency with authority to establish minimum land use standards applicable throughout the Basin and to police the region to ensure compliance with the general plan and any ordinances passed. However, its sovereign creators did not envision it as a super bi-state zoning board whose approval would be a prerequisite to all land development,[2] or as an omnipotent board which could enforce its will over the majority vote of one state's delegation.[3]

The TRPA itself recognizes the limits of its authority and has even delegated some of the authority it has to local government entities. In promulgating the overall plans, regulations and procedures with respect to land use and development, the TRPA provided that the power to issue building permits (including special use and variance permits) remains in the hands of the local zoning authorities. *See* TRPA Land Use Ordinance § 4.10. The TRPA reserved for itself, with respect to permits, a limited *review* function. *See id.* at § 4.32. In other words, neither the statutory

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2. Under the Compact, no building proposal need be reviewed and approved by the TRPA before construction except public works projects (and only those built by parties other than the State of California or Nevada.) Article VI(c).

3. It is clear from the legislative history of the Compact that Nevada, in particular, was extremely reluctant to relinquish much of its sovereignty over land use controls and planning. *See generally* Note, *Regional Government for Lake Tahoe*, 22 Hastings L.J. 705 (1971). For example, Nevada insisted that California eliminate from its law the provision that a simple majority vote of the TRPA quorum could take action on proposals. California acquiesced and adopted the "dual majority" provision, Article III(g).

nor regulatory scheme requires that a proposed project[4] gain the approval of the TRPA before it is built. This is so even if the project has been granted a variance from the general plan by the local permit-issuing authority. TRPA's Land Use Ordinance § 4.32 provides:

> Administrative permits and variance permits required pursuant to Section 4.10(2) and issued by the permit-issuing authority shall be subject to Agency review, and upon review of any such permit the Agency shall take final action, whether to approve, to require modification or to reject such permit within 60 days after such permit is delivered to the Agency. If the agency does not take final action within 60 days, the permit shall be deemed approved.

This important regulation is perfectly consistent with Articles III(g) and VI(k) and indicates, as the builders have argued, that "final action" does not take place unless the TRPA does one of three things: 1) approves the permit 2) requires modification or 3) rejects the permit. This regulation evidences TRPA's own construction of the disputed statutory provisions, and we should follow the construction by those charged with the statute's execution unless there are compelling indications that it is wrong. *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 421 (1973). We find no such indications.

Under the TRPA statutory and regulatory scheme, variance and use permits must be submitted for review to the TRPA, and the TRPA has broad discretion to reject or approve on the merits each building permit request. How-

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4. The only exception being public works projects other than those built by the State of California or Nevada. *See* Article VI(c); note 2 *supra*.

ever, the TRPA's power of de novo review is fully exercised only when a dual majority for or against a proposal is reached.

When a split vote is registered, the TRPA assumes a different posture, and becomes more like an appellate court than a zoning board. If an appellate court cannot agree on a majority decision, then the lower body's decision stands affirmed—the rationale being that no "decision" has been reached by the higher authority. *Cf. State Department of Ecology v. City of Kirkland,* 84 Wash. 2d 25, 523 P.2d 1181, 1184 (1974). Similarly, in this case where no dual majority was mustered for either approval or rejection, we conclude that no "decision" was ever rendered nor "final action" ever taken by the TRPA. By virtue of Article VI(k) which provides in such a case that the project be deemed approved, the decision of the local permit issuing authority in effect stands affirmed.

Such a reading of the Compact, notwithstanding California's protestations to the contrary,[5] does not gut its provisions nor frustrate its purpose. The district court's interpretation of Articles III(g) and VI(k), which we affirm, gives effect to the statutory scheme carefully devised by two states reluctant to relinquish very much sovereignty. That the Compact may not be a powerful antigrowth measure in that it permits a majority of one state to stop effective action by the TRPA is not the result of a court imposed

5. California also argues that such an interpretation would allow construction of projects that are in blatant violation of the regional plan. Two responses are appropriate: First, the TRPA chose to vest variance-granting power in the local authorities and set up guidelines for them to follow; second and more important, if the local authorities violate the variance guidelines and other ordinances in granting permits, either state as well as the TRPA has the right to bring action in state or federal court seeking compliance with the regional plan and the TRPA's regulations. *See* Article VI(b).

interpretation but of deliberate action by the legislatures of Nevada and California and the Congress of the United States. This court is not empowered to rewrite the Compact. California's remedy lies solely with the legislative branches of the parties to the Compact.

AFFIRMED.

Appendix C

Public Law 91-148

AN ACT

To grant the consent of the Congress to the Tahoe regional planning compact, to authorize the Secretary of the Interior and others to cooperate with the planning agency thereby created, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to encourage the wise use and conservation of the waters of Lake Tahoe and of the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe regional planning compact heretofore adopted by the States of California and Nevada, which compact reads as follows:

"TAHOE REGIONAL PLANNING COMPACT

"Article I. Findings and Declarations of Policy

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the

region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is impertative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title.

"ARTICLE II. DEFINITIONS

"As used in this compact:

"(a) 'Region,' includes Lake Tahoe, the adjacent parts of the Counties of Douglas, Ormsby, and Washoe lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the Counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, M.D.B. &M. The region defined and described herein shall be as precisely delineated on official maps of the agency.

"(b) 'Agency' means the Tahoe Regional Planning Agency.

"(c) 'Governing body' means the governing board of the Tahoe Regional Planning Agency.

"(d) 'Regional plan' shall mean the long-term general plan for the development of the region.

"(e) 'Interim plan' shall mean the interim regional plan adopted pending the adoption of the regional plan.

"(f) 'Planning commission' means the advisory planning commission appointed pursuant to paragraph (h) of Article III.

"ARTICLE III. ORGANIZATION

"(a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

"The governing body of the agency shall be constituted as follows:

"One member appointed by each of the County Boards of Supervisors of the Counties of El Dorado and Placer and one member appointed by the City Council of the City of South Lake Tahoe. Each member shall be a member of the city council or county board of supervisors which he represents and, in the case of a supervisor, shall be a resident of a county supervisorial district lying wholly or partly within the region.

"One member appointed by each of the boards of county commissioners of Douglas, Ormsby and Washoe counties. Any member so appointed shall be a resident of the county from which he is appointed and may be, but is not required to be:

"(1) A member of the board which appoints him; and

"(2) a resident of or the owner of real property in the region, as each board of county commissioners may in its own discretion determine. The manner of selecting the person so to be appointed may be further prescribed by county ordinance. A person so appointed shall before taking his seat on the governing body disclose all his economic interests in the region, and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. If any board of county commissioners fails to make an appointment required by this paragraph within 30 days after the effective date of this

act or the occurrence of a vacancy on the governing body, the governor shall make such appointment. The position of a member appointed by a board of county commissioners shall be deemed vacant if such member is absent from three consecutive meetings of the governing body in any calendar year.

"One member appointed by the Governor of California and one member appointed by the Governor of Nevada. The appointment of the California member is subject to Senate confirmation; he shall not be a resident of the region and shall represent the public at large. The member appointed by the Governor of Nevada shall not be a resident of the region and shall represent the public at large.

"The Administrator of the California Resources Agency or his designee and the Director of the Nevada Department of Conservation and Natural Resources or his designee.

"(b) The members of the agency shall serve without compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

"(c) The term of office of the members of the governing body shall be at the pleasure of the appointing authority in each case, but each appointment shall be reviewed no less often than every 4 years.

"(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such

meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as 'the first Monday of each month,' and shall not change such date oftener than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. Notice of any special meeting, except an emergency meeting, shall be given by so publishing the date, place and agenda at least 5 days prior to the meeting.

"(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in such event the appointing authority shall appoint a successor.

"(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be two years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

"(g) A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

"(h) An advisory planning commission shall be appointed by the agency, which shall consist of an equal number of members from each state. The commission shall include but shall not be limited to: the chief planning officers of Placer County, El Dorado County, and the City of South

Lake Tahoe in California and the Counties of Douglas, Ormsby, and Washoe in Nevada, the Placer County Director of Sanitation, the El Dorado County Director of Sanitation, the county health officer of Douglas County or his designee, the county health officer of Washoe County or his designee, the Chief of the Bureau of Environment Health of the Health Division of Department of Health, Welfare and Rehabilitation of the State of Nevada or his designee, the executive officer of the Lahontan Regional Water Quality Control Board or his designee, the executive officer of the Tahoe Regional Planning Agency who shall act as chairman and at least four lay members each of whom shall be a resident of the region.

"(i) The agency shall establish and maintain an office within the region. The agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

"(j) Each authority charged under this compact or by the law of either state with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own state of the action taken. Upon receipt of certified copies of the resolutions or notifications appointing the members of the governing body, the Secretary of State of each respective state shall notify the Governor of the state who shall, after consultation with the Governor of the other state, issue a concurrent call for the organization meeting of the governing body at a location determined jointly by the two governors.

"(k) Each state may provide by law for the disclosure or elimination of conflicts of interest on the part of members of the governing body appointed from that state.

"ARTICLE IV. PERSONNEL

"(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to execute the powers and functions provided for under this act or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering.

"(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency, and shall be regional and bistate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either state, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

"(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally.

"ARTICLE V. PLANNING

"(a) In preparing each of the plans required by this article and each amendment thereto, if any, subsequent to

its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan or amendment. The notice required by this paragraph shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region.

"The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this paragraph.

"If a request is made for the amendment of the regional plan by:

> "(1) a political subdivision a part of whose territory would be affected by such amendment; or
>
> "(2) the owner or lessee of real property which would be affected by such amendment.

the governing body shall complete its action on such amendment within 60 days after such request is delivered to the agency.

"Tahoe Regional Plan

"(b) Within 15 months after the formation of the agency, the planning commission shall recommend a regional plan.

Within 18 months after the formation of the agency, the governing body shall adopt a regional plan. After adoption, the planning commission and governing body shall continuously review and maintain the regional plan. The regional plan shall consist of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards, and elements of the regional plan.

"The regional plan shall include the following correlated elements:

"(1) A land-use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to, an indication or allocation of maximum population densities.

"(2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to, freeways, parkways, highways, transportation facilities, transit routes, waterways, navigation and aviation aids and facilities, and appurtenant terminals and facilities for the movement of people and goods within the region.

"(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

"(4) A recreation plan for the development, utilization, and management of the recreational resources of the region, including but not limited to, wilderness and forested lands,

parks and parkways, riding and hiking trails, beaches and playgrounds, marinas and other recreational facilities.

"(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

"In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the state, federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region. Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of state and federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private individuals.

"(c) All provisions of the Tahoe regional general plan shall be enforced by the agency and by the states, counties and cities in the region.

"TAHOE REGIONAL INTERIM PLAN

"(d) Within 60 days after the formation of the agency, the planning commission shall recommend a regional interim plan. Within 90 days after the formation of the

agency, the governing body shall adopt a regional interim plan. The interim plan shall consist of statements of development policies, criteria and standards for planning and development, of plans or portions of plans, and projects and planning decisions, which the agency finds it necessary to adopt and administer on an interim basis in accordance with the substantive powers granted to it in this agreement.

"(e) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan and interim plan, in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other agencies of government and by private organizations and individuals concerned.

"(f) All provisions of the interim plan shall be enforced by the agency and by the states, the counties, and cities.

"ARTICLE VI. AGENCY'S POWERS

"(a) The governing body shall adopt all necessary ordinances, rules, regulations and policies to effectuate the adopted regional and interim plans. Every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the basin, and any political subdivision may adopt and enforce an equal or higher standard applicable to the same subject of regulation in its territory. The regulations shall contain general, regional standards including but not limited to the following: water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts and grading; piers; harbors, breakwaters; or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile-home parks; house relocation; outdoor advertising; flood plain protection; soil and

sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the interim plan or the general plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective states, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the interim or general plan.

"Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the interim plan or the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

"Interim regulations shall be adopted within 90 days from the formation of the agency and final regulations within 18 months after the formation of the agency.

"Every plan, ordinance, rule, regulation or policy adopted by the agency shall recognize as a permitted and conforming use any business or recreational establishment which is required by law of the state in which it is located to be individually licensed by the state, if such business or establishment:

"(1) Was so licensed on February 5, 1968, or was licensed for a limited season during any part of the calendar year immediately preceding February 5, 1968.

"(2) Is to be constructed on land which was so zoned or designated in a finally adopted master plan on February 5, 1968, as to permit the construction of such a business or establishment.

"(b) All ordinances, rules, regulations and policies adopted by the agency shall be enforced by the agency and by the respective states, counties, and cities. The appropriate courts of the respective states, each within its limits of territory and subject matter provided by state law, are vested with jurisdiction over civil actions to which the agency is a party and criminal actions for violations of its ordinances. Each such action shall be brought in a court of the state where the violation is committed or where the property affected by a civil action is situated, unless the action is brought in a federal court. For this purpose, the agency shall be deemed a political subdivision of both the State of California and the State of Nevada.

"(c) Except as otherwise provided in paragraph (d), all public works projects shall be reviewed prior to construction and approved by the agency as to the project's compliance with the adopted regional general plan.

"(d) All plans, programs and proposals of the State of California or Nevada, or of its executive or administrative agencies, which may substantially affect, or may specifically apply, to the uses of land, water, air, space and other natural resources in the region, including but not limited to public works plans, programs and proposals concerning highway routing, design and construction, shall be referred to the agency for its review, as to conformity with the regional plan or interim plan, and for report and recommendations by the agency to the executive head of the state agency concerned and to the Governor. A public works project which is initiated and is to be constructed by a department of either state shall be submitted to the agency for review and recommendation, but may be constructed as proposed.

"(e) The agency shall police the region to ensure compliance with the general plan and adopted ordinances, rules,

regulations and policies. If it is found that the general plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to ensure compliance.

"(f) Violation of any ordinance of the agency is a misdemeanor.

"(g) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by state or federal law.

"(h) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

"(i) Whenever a new city is formed within the region, the membership of the governing body shall be increased by two additional members, one appointed by, and who shall be a member of, the legislative body of the new city, and one appointed by the Governor of the state in which the city is not located. A member appointed by the Governor of California is subject to Senate confirmation.

"(j) Every record of the agency, whether public or not, shall be open for examination to the Legislative Analyst of the State of California and the Fiscal Analyst of the State of Nevada.

"(k) Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final

action within 60 days, the proposal shall be deemed approved.

"ARTICLE VII. FINANCES

"(a) Except as provided in paragraph (e), on or before December 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion not more than $150,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable property within the region. Each county in California shall pay the sum allotted to it by the agency from any funds available therefor and may levy a tax on any taxable property within its boundaries sufficient to pay the amount so allocated to it. Each county in Nevada shall pay such sums from its general fund or from any other moneys available therefor.

"(b) The agency may fix and collect reasonable fees for any services rendered by it.

"(c) The agency shall be strictly accountable to any county in the region for all funds paid by it to the agency and shall be strictly accountable to all participating bodies for all receipts and disbursements.

"(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds.

"(e) As soon as possible after the ratification of this compact, the agency shall estimate the amount of money necessary to support its activities:

"(1) For the remainder of the then-current fiscal year; and

"(2) If the first estimate is made between January 1 and June 30, for the fiscal year beginning on July 1 of that calendar year.

The agency shall then allot such amount among the several counties, subject to the restriction and in the manner provided in paragraph (a), and each county shall pay such amount.

"(f) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support from other sources. No obligation contracted by the agency shall bind either of the party states or any political subdivision thereof.

"ARTICLE VIII. MISCELLANEOUS

"(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in paragraph (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining state and in full force and effect as to the state affected as to all severable matters.

"(b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it

from time to time by the action of the Legislature of either state concurred in by the Legislature of the other.

"(c) A state party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other state and to the agency administrators. This provision is not severable, and if it is held to be unconstitutional or invalid, no other provision of this compact shall be binding upon the State of Nevada or the State of California.

"(d) No provision of this compact shall have any effect upon the allocation or distribution of interstate waters or upon any appropriative water right."

SEC. 2. The Secretary of the Interior and the Secretary of Agriculture are authorized, upon request of the Tahoe Regional Planning Agency, to cooperate with said agency in all respects compatible with carrying out the normal duties of their Departments.

SEC. 3. The consent to the compact by the United States is subject to the condition that the President may appoint a nonvoting representative of the United States to the Tahoe regional planning governing board.

SEC. 4. Any additional powers conferred on the agency pursuant to article VIII(b) of the compact shall not be exercised unless consented to by the Congress.

SEC. 5. Nothing contained in this Act or in the compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over, or to the region or waters which are the subject of the compact, or in any way affect rights owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States.

SEC. 6. The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by or concerning the Tahoe Regional Planning Agency as is deemed appropriate by the Congress or such committee.

SEC. 7. The right to alter, amend or repeal this Act is expressly reserved.

Approved December 18, 1969.

Appendix D

San Francisco Chronicle

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Fri., June 27, 1975

North Shore

TAHOE HOUSING CLEARS A HURDLE

South Lake Tahoe

The Tahoe Regional Planning Agency cleared the way yesterday for construction of 200 new houses and 66 motel units on the lake's North Shore once sewer problems in the area are solved.

The projects still require the approval of the California Tahoe Regional Planning Agency, which is considering strict growth controls in the portion of the lake basin within its jurisdiction.

The proposed developments were approved by the California-Nevada agency through a set of complicated voting rules. Two of the three Nevada members present and one of California's five members opposed the project. In the absence of a dual majority, the projects automatically won authorization.

The projects are North Rim, a 100-unit condominium development and the Boatworks, a 66-unit motel, both to be built at Tahoe City by the Moana Corp., and the Chambers Landing development of 116 housing units and recreational facilities planned by Perini Lake Tahoe Properties Inc. for a site near Homewood.

Another development, Alpine Tahoe, 100 condominiums proposed by the Dillingham Co., was delayed for 30 days. But the agency is expected to approve it, too, subject to the same sewage disposal limitation, if a height variance is granted.

The approved developments may be held up until a new sewer system and treatment plant are finished in two or three years. But representatives of the firms contemplating building urged agency action in order to keep their plans alive.

Agency members favoring the projects expressed reluctance to force developers to return to the agency with their plans after sewage problems are corrected and risk losing their place in line for sewer hookups.

Our Correspondent

Appendix E

United States Court of Appeals
for the Ninth Circuit

No. 74-2546

People of the State of California
ex. rel. Evelle J. Younger,
Attorney General,
Plaintiff-Appellant,

vs.

Tahoe Regional Planning Agency,
Ted Jennings, Oliver Kahle,
Defendants-Appellees.

OPINION

[April 30, 1975]

Appeal from the United States District Court
for the District of Nevada

Before: Koelsch and Choy, Circuit Judges,
and Kelleher,* District Judge.

Choy, Circuit Judge:

The State of California appeals from the district court's refusal to grant a preliminary injunction to halt construction of two hotel-casinos in the Lake Tahoe Basin (the Basin). We affirm.

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*Honorable Robert J. Kelleher, United States District Judge, Central District of California, sitting by designation.

In order to protect the natural resources and ecological balance of the Lake Tahoe Basin[1] the states of California and Nevada in 1968 entered into a compact to create a regional agency with extensive powers to regulate and control development within the Basin. Cal. Govt. Code § 66801 (West Supp. 1975); Nev. Rev.Stat. §§ 277.190 et seq. (1973). The compact, known as The Tahoe Regional Planning Compact (the Compact), received the consent of Congress in December 1969. Public Law 91-148, 83 Stat. 360.

The Compact created the Tahoe Regional Planning Agency (TRPA), which was composed of five delegates from each state and one non-voting delegate representing the federal government. The TRPA was charged with responsibility for developing within ninety days a regional interim plan and, within eighteen months, a regional plan which would reflect a wide variety of economic, environmental and social considerations. The Compact also directed the TRPA to adopt all ordinances, rules, regulations and

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1. Article I of the Compact states:

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title."

policies necessary to effectuate the regional interim plan and the regional plan. *See League to Save Lake Tahoe v. Tahoe Regional Planning Agency,* 507 F.2d 517, 518 (9th Cir. 1974).

Pursuant to its mandate, the TRPA adopted various procedural regulations and imposed certain land use, height and density restrictions applicable to developments in the Basin. If a builder wanted to develop more than 200 square feet of land or to erect certain types of structures, he was required first to seek a permit from the local permit-issuing authority (generally, the zoning authority of the county in which the construction was to take place). The permit-issuing authority, according to TRPA regulations, was required to adhere to the policies and land restrictions adopted by the TRPA but was granted the power to issue variance permits under certain circumstances.

Appellees Jennings and Kahle each applied for and was granted an administrative (special use) permit from the governing body of Douglas County, Nevada, for the construction of a hotel-casino. The Douglas County commissioners also granted a height variance whereby each appellee was permitted to construct his hotel-casino to a height greater than the forty foot limit allowed by TRPA's Land Use Ordinance. In granting the variances the commissioners, as required by Section 8.33 of the Land Use Ordinance, made a specific finding that the height variance for each hotel would be a benefit to the general welfare of the region. The projects were then submitted for approval to the Nevada Tahoe Regional Planning Agency, a state agency empowered to exercise environmental control over gaming establishments in the Nevada side of the Basin. The Nevada agency approved both projects.

Jennings and Kahle then submitted the special use and height variance permits to the TRPA for review, as required by Section 4.32 of the Land Use Ordinance. On July 25, 1974, following a hearing before the TRPA, a motion to approve both projects was made as well as a motion to deny both projects. The vote was as follows:

Motion to Approve Projects

	For	*Against*
California Delegates	0	5
Nevada Delegates	3	2

Motion to Deny Projects

	For	*Against*
California Delegates	5	0
Nevada Delegates	2	3

Soon after the vote, Jennings and Kahle made plans to commence construction on their respective projects, California brought this action to enjoin construction, and the district court issued a temporary restraining order. After a hearing, however, it dissolved the order and denied California's motion for a preliminary injunction. The court's decision was based on its conclusion that the TRPA votes did not constitute "action" within the meaning of the Compact and that the TRPA's failure to take action resulted in the projects being deemed approved under Article VI(k) of the Compact.

Scope of Review

By arguing that the district court's decision may not be reversed unless it amounted to an abuse of discretion, the builders raised a threshold question relating to the scope of appellate review. Although it is a well-settled general rule that the grant or denial of an interlocutory injunction

is a matter committed to the discretion of the district court, that rule does not apply to cases where the court's action is erroneous as a matter of law. *See K-2 Ski Co. v. Head Ski Co., Inc.,* 467 F.2d 1087, 1088 (9th Cir. 1972). Since the district court's denial of the preliminary injunction was based solely upon its *legal* conclusions on the meaning of the TRPA Compact, its action is freely reviewable. *See Societe Comptoir De L'Industrie Colonniere Establissements Boussac v. Alexander's Department Stores, Inc.,* 299 F.2d 33, 35-36 (2d Cir. 1962).

"Final Action"

The unique issue raised by this appeal is whether, within the meaning of the Compact, no "final action" is taken by the TRPA on a proposal unless there is a majority vote by *each* state's delegation that the proposal presented is either approved, rejected, or modified. At the center of this controversy finding California and Nevada on opposite sides are two Compact provisions. Article III(g) provides:

> A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. . . .

And Article VI(k) provides:

> Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does

> not take final action within 60 days, the proposal shall be deemed approved.

According to California, Article III(g) is ambiguous and should be interpreted as follows:

> When a quorum is present and votes on a proposal, if that proposal does not receive a positive vote from the majority of both states then the proposal fails. That vote is final action and if that vote comes within 60 days after the proposal is submitted to the TRPA, Article VI(k) of the Compact with its 60 day provision is irrelevant.

Brief for Appellant at 12-13.

Appellees, on the other hand, emphasize the Article III language that a majority vote of the members representing each state shall be required to *"take action"* with respect to any matter. According to the builders, unless there is a dual majority vote either to approve, reject or modify a proposal, Agency "action" has not taken place and Article VI(k) comes into play even though a vote has been recorded. Appellees' interpretation would dictate that their projects be "deemed approved" under Article VI(k). This is so because the majority of each state's delegation on the TRPA failed either to approve or reject the projects. In other words, appellees suggest that under the statutory and regulatory scheme a "split vote" (i.e., a majority of one state's representatives voting one way and a majority of the other state's representatives voting another) should be considered a nullity, or at least not an "action" or "final action." The district court, finding the language of the two Articles unambiguous, adopted the appellees' view of the voting and approval procedure.

The entire dispute turns on the meaning of the words "action" in Article III(g) and "final action" in Article VI(k). The reason these simple terms have caused so much difficulty is that appellees' interpretation is inconsistent with common parliamentary procedure. Generally, once a quorum is present, any vote by an organization on any proposal is considered "action." Thus, if there is a proposal on the floor for approval of a new meeting time, and it fails to gain a majority vote (e.g., the vote ends in a tie), "action" has been taken and the proposal is considered *rejected. See* Robert's Rules of Order Newly Revised § 43 (1970). Consistent with this parliamentary rule are numerous decisions by courts holding that tie votes by zoning boards or other governmental bodies have the effect of *denying* the proposals before them. *See, e.g., Sokolis v. Zoning Board of Appeals of Springfield,* 21 Ill. App. 2d 178, 157 N.E. 2d 427 (1959); *Montgomery County Board of Appeals v. Walker,* 288 Md. 574, 180 A.2d 865 (Ct. App. 1962). According to California, these cases indicate that it is absurd to argue that a split vote by the TRPA does not amount to a "denial" or at least "action". California, understandably, wants to avoid the situation where a significant construction project is "deemed approved" even though its proponents can muster no more than a bare majority of one state's delegation or quorum.

Although we find California's argument extremely appealing on an emotional level, it simply does not take into account the plain meaning of the Compact and the intent of its architects. California makes a critical eror in likening the Compact to ordinary zoning legislation and the TRPA to a typical zoning board. In interpreting the provisions of the unique statutory scheme involved here, we must look not to Robert's Rules of Order or decisions dealing with tie

votes by zoning boards, but instead to the actual language used, as viewed against the backdrop of the Compact's legislative history.

What California fails to acknowledge fully is that the Compact and the TRPA are *sui generis* offsprings of a marriage between sovereign partners, each extremely reluctant to relinquish its sovereignty over a portion of its territory. The TRPA is a powerful planning agency with authority to establish minimum land use standards applicable throughout the Basin and to police the region to ensure compliance with the general plan and any ordinances passed. However, its sovereign creators did not envision it as a super bi-state zoning board whose approval would be a prerequisite to all land development,[2] or as an omnipotent board which could enforce its will over the majority vote of one state's delegation.[3]

The TRPA itself recognizes the limits of its authority, and the intent of the states not to pre-empt the zoning power of the local governmental entities. In promulgating the overall plans, regulations and procedures with respect to land use and development, the TRPA provided that the power to issue building permits (including special use and variance permits) remains in the hands of the local zoning authorities. *See* TRPA Land Use Ordinance § 4.10. The

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2. Under the Compact, no building proposal need be reviewed and approved by the TRPA before construction except public works projects (and only those built by parties other than the State of California or Nevada.) Article VI(c).

3. It is clear from the legislative history of the Compact that Nevada, in particular, was extremely reluctant to relinquish much of its sovereignty over land use controls and planning. *See generally* Note, *Regional Government for Lake Tahoe,* 22 Hastings L.J. 705 (1971). For example, Nevada insisted that California eliminate from its law the provision that a simple majority vote of the TRPA quorum could take action on proposals. California acquiesced and adopted the "dual majority" provision, Article III(g).

TRPA reserved for itself, with respect to permits, a limited *review* function. *See id.* at § 4.32. In other words, neither the statutory nor regulatory scheme requires that a proposed project[4] gain the approval of the TRPA before it is built. This is so even if the project has been granted a variance from the general plan by the local permit-issuing authority. TRPA's Land Use Ordinance § 4.32 provides:

> Administrative permits and variance permits required pursuant to Section 4.10(2) and issued by the permit-issuing authority shall be subject to Agency review, and upon review of any such permit the Agency shall take final action, whether to approve, to require modification or to reject such permit within 60 days after such permit is delivered to the Agency. If the agency does not take final action within 60 days, the permit shall be deemed approved.

This important regulation is perfectly consistent with Articles III(g) and VI(k) and indicates, as the builders have argued, that "final action" does not take place unless the TRPA does one of three things: 1) approves the permit 2) requires modification or 3) rejects the permit. This regulation evidences TRPA's own construction of the disputed statutory provisions, and we should follow the construction by those charged with the statute's execution unless there are compelling indications that it is wrong. *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 421 (1973). We find no such indications.

Under the TRPA statutory and regulatory scheme, TRPA's power with respect to zoning permits is not unlike

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4. The only exception being public works projects other than those built by the State of California or Nevada. *See* Article VI(c); note 2 *supra*.

judicial or administrative *review*. If a court or reviewing board cannot agree on a majority decision, then the lower body's decision stands affirmed—the rationale being that no "decision" has been reached by the higher authority. *See State Department of Ecology v. City of Kirkland*, 84 Wash. 2d 25, 523 P.2d 1181, 1184 (1974). Similarly, in this case where no dual majority was mustered for either approval or rejection, we conclude that no "decision" was ever rendered nor "final action" ever taken by the TRPA.

Such a reading of the Compact, notwithstanding California's protestations to the contrary,[5] does not gut its provisions nor frustrate its purpose. The district court's interpretation of Articles III(g) and VI(k), which we affirm, gives effect to the statutory scheme carefully devised by two states reluctant to relinquish very much sovereignty. That the Compact may not be a powerful anti-growth measure in that it permits a majority of one state to stop effective action by the TRPA is not the result of a court imposed interpretation but of deliberate action by the legislatures of Nevada and California and the Congress of the United States. This court is not empowered to rewrite the Compact. California's remedy lies solely with the legislative branches of the parties to the Compact.

AFFIRMED.

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5. California also argues that such an interpretation would allow construction of projects that are in blatant violation of the regional plan. Two responses are appropriate: First, the TRPA chose to vest variance-granting power in the local authorities and set up guidelines for them to follow; second and more important, if the local authorities violate the variance guidelines and other ordinances in granting permits, either state as well as the TRPA has the right to bring action in state or federal court seeking compliance with the regional plan and the TRPA's regulations. *See* Article VI(b).